TES.

LANTS,

TRANSCRIPT OF RECORD.

PREME COURT OF THE UNITED STATES.

No. 265.

RISON DURKEE, JOHN PONDER, ET AL., APPELLANTS,

vs.

BOARD OF LIQUIDATION OF THE STATE OF LOUISIANA.

L FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF LOUISIANA.

FILED OCTOBER 14, 1878.

SUPREME COURT OF THE UNITED STATES.

No. 265.

HARRISON DURKEE, JOHN PONDER, ET AL., APPELLANTS,

vs.

THE BOARD OF LIQUIDATION OF THE STATE OF LOUISIANA.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF LOUISIANA.

INDEX.

	Original.	Print.
Bill of complaint	1	1
Subpœna in chancery	7	2
Entry at rules	9	3
Pro confesso	9	3
Consent	10	4
Plea to jurisdiction	10	4
Pro confesso set aside	12	4
Entry at rules	12	5
Fixing of plea	13	5
Plea overruled	14	5
Answer	14	5
Entry at rules	20	7
Replication	21	7
Submission of cause	22	8
Note of evidence	22	8
Affidavit of William Mertens	24	9
Richard Irvin, jr	25	9
William M. Clarke	26	10
Oliver Ames	27	10
George Bliss	28	11
Theodore Gilman	30	11
Robert L. Cutting	31	12
J. L. Macaulay	32	12
John Steward	33	13
Harrison Durkee	34	13
John T. Hanneman	35	14
J. M. Munoz	36	14
Theresa A. Anderson	36	15
John Ponder	37	15
John Bloodgood	38	15

	Original.	Print.
Treasurer's certificate	39	16
Decree	40	16
Petition for appeal	40	16
Order for appeal	42	17
Agreement	42	17
Bond for appeal	43	17
Clerk's certificate	46	18
Citation	47	19
Stipulation of counsel in relation to record in case of Williams & Guion *vs.* State of Louisiana *et al.* used as an exhibit in this case	49	20

1 *Bill of complaint.—Filed November 24th, 1877.*

UNITED STATES OF AMERICA:

Circuit court of the United States, fifth circuit and district of Louisiana.

HARRISON DURKEE ET AL.
vs.
THE BOARD OF LIQUIDATION. } No. 8303.

To the judges of the circuit court of the United States for the fifth circuit and district of Louisiana:

Harrison Durkee, John Pondir, John L. Macaulay, William M. Clarke, Samuel Sloan, J. M. Munoz, John Steward, Theresa A. Anderson, wife of John J. Anderson, authorized and assisted by said John J. Anderson, who appears herein for that purpose; Louis Von Hoffman and William Mertens, composing the firm of L. Von Hoffman and Company, Robert L. Cutting & Co., Morton, Bliss & Co., Richard Irwin & Company, William H. Guion, Knoop, Haverman and Company, Gil-
2 man, Son and Company, The National Bank of Commerce, a corporation created by the laws of the United States, and domiciled in the city of New York, John Bloodgood and Company, all thus far enumerated being of the city and State of New York, and citizens of the State of New York, and Oliver Ames, of Massachusetts, a citizen of Massachusetts, bring this their bill on behalf of themselves and all others who are similarly situated as to right and who are willing to make themselves parties hereto, against The Board of Liquidation, a corporation created by and under the act of the general assembly of the State of Louisiana, numbered three of 1874, approved January 24, 1874, and the various acts amendatory thereof and supplementary thereto, which corporation is domiciled in New Orleans and is a citizen of Louisiana, and its members are all citizens of Louisiana, & thereupon your orators complain and say:

First. That your orators are respectively owners and holders of certain bonds or negotiable obligations of the State of Louisiana,
3 duly made and issued under and in compliance with the terms and conditions and agreements of act No. 95 of the general assembly of Louisiana approved April 20, 1871, each of the said bonds being for the sum of one thousand dollars, and having unpaid interest coupons attached as provided by said last named act, two coupons of interest having been paid by the State when due.

That your orators respectively acquired said bonds before maturity, for value and in good faith, and their ownership respectively is as follows:

The said Durkee holds thirty of the said bonds; the said Pondir forty-five; the said Macaulay thirty; the said Clarke seven; the said Sloan forty-six; the said Munoz forty-six; the said Stewart seventy-five; the said Mrs. Anderson forty-two; the said Von Hoffman & Co. twenty-eight; the said Mertens one hundred and three; said Cutting & Company sixty-nine; said Morton, Bliss & Co. thirty-one; said Richard Irvin and Company eighty-four; said Guion sixty-nine; said
4 Knoop, Havermann & Co. fifty-three; said Gilman, Son and Company one hundred; the said bank fifty-four; said John Bloodgood and Company ninety-four bonds; being in all twelve hundred and

sixty-six bonds of one thousand dollars each, and the said bonds are ready to be produced.

Second. That by the said act No. 3, of 1874, it was provided that the said bonds as well as other valid bonds described in said act might be exchanged for the consolidated bonds therein provided and on the terms therein prescribed; and it was made the duty of the said Board of Liquidation to make such exchange, then the holder of such rejected bond should have an action against said board to have such rejected bond declared valid and fundable by a proper decree.

Third. That the said board has refused and still refuses to exchange the bonds respectively held by your orators for said consolidated bonds, though often requested so to do, alleging as an excuse the pro-
5 visions of act No. 11 of 1875, extra session, and act No. 86, of 1876, which undertake and profess to forbid such funding; but your orators aver that the said two acts of 1875 and 1876 are unconstitutional, null and void, being in conflict with the Constitution of the United States, art. 1, sec. 10, part 1, forbidding a State to pass any law impairing the obligation of contracts, and with articles 73 and 110 of the constitution of Louisiana.

Fourth. That the said bonds issued under act No. 95 of 1871, and held by your orators, were issued in exchange for an equal amount of stock in the New Orleans, Mobile and Texas Railroad Company, being the company mentioned in said act 64, the name of the New Orleans, Mobile and Chattanooga Railroad Company, but whose name was changed as above by act No. 94 of the same year, and that said railroad was at that time a solvent corporation, with about two hundred miles of completed railway and valuable rolling-stock which had cost upwards of eight millions of dollars; and the said stock is still held in the treasury of the State.

6 Fifth. That your orators are respectively holders of the said bonds for value before maturity in good faith, and have all the rights of such holders legal and equitable and the said bonds are valid and fundable, and your orators are entitled to a decree declaring the said bonds so to be.

And the premises considered, your orators pray that a decree of this honorable court may be rendered, declaring the said bonds of your orators respectively to be valid and legal obligations, and that your orators may have such other and further decree and relief in the premises as the case may require and to equity may seem meet.

And may it please your honors to grant unto your orators a writ of subpœna of the United States of America, issuing out of and under the seal of this honorable court, directed to the said The Board of Liquidation, through Francis T. Nicholls, its president, commanding said corporation to appear on a day certain in this honorable court, then and there
7 to answer all and singular the premises, and for all general relief.

And your orators as in duty bound will ever pray, &c.

(Signed) KENNARD, HOWE & PRENTISS,
Solicitors for Complainants.

(Signed) JOHN H. KENNARD,
Of Counsel.

Subpœna in chancery to defendants.—Issued November 24th, 1877.

UNITED STATES OF AMERICA:

The President of the United States to the marshal for the district of Louisiana, greeting:

You are hereby commanded to summon The Board of Liquidation, a

corporation of this State, through Francis T. Nicholls, its president, commanding said corporation to appear before the honorable the judges of the fifth judicial circuit of the United States of America, at a circuit court to be holden on the first Monday of January, 1878, then and there to answer a bill in chancery filed against said Board of Liquidation, wherein Harrison Durke, John Pondir, John L. Macaulay, William M. Clarke,
Samuel Sloan, J. M. Munoz, John Steward, and others therein
8 named, are complainants and said Board of Liquidation is defendant.

Herein fail not, and have you then and there this writ, with your endorsement thereon how you have executed the same.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, this 24th day of November in the year of our Lord one thousand eight hundred and seventy-seven, and the 102d year of American Independence.

[SEAL.] (Signed) F. B. VINOT,
D'y Cl'k.

The defendant is hereby notified that it is required to enter its appearance in the clerk's office of the United States circuit court, on or before the first Monday of January, 1877, otherwise the bill may be taken pro confesso.

(Signed) F. B. VINOT,
D'y Cl'k.

Marshal's return.

Received November 24th, 1877, by the U. S. marshal, and on the
9 27th day of Nov., 1877, served a copy hereof on The Board of Liquidation of the State of Louisiana, through its president, Hon. Francis T. Nicholls, by handing the same to him in person in the city of New Orleans.

(Signed) W. G. ELLIOTT,
D'y Marshal.

Entry at rules.—Extract from chancery order book, January 7th, 1878.

HARRISON DURKEE ET AL. *vs.* BOARD OF LIQUIDATION. } No. 8303.

The defendant by its solicitor, H. N. Ogden, att'y gen'l of the State, has this day entered its appearance to the complainants' bill of complaint.

Pro confesso.—Extract from chancery order book, February 8th, 1878.

HARRISON DURKEE ET AL. *vs.* THE BOARD OF LIQUIDATION. } No. 8303.

On motion of Kennard, Howe and Prentiss, solicitors for complainants, and suggesting that the defendant has been served with
10 subpœna in chancery and has entered an appearance on the first Monday of January, 1878, but has not filed any demurrer, plea, or answer: It is ordered that the bill of complaint and the matters and things therein stated be taken as confessed.

Consent.—Filed February 26th, 1878.

U. S. circuit court.

DURKEE
vs.
BOARD OF LIQUIDATION.

In this case if Mr. Ogden will file a plea to-day, I shall not object to the decree pro confesso being set aside.
26th Feb'y, 1878.
(Signed) W. W. HOWE,
For Compl't.

Plea to jurisdiction.—Filed February 28th, 1878.

HARRISON DURKEE ET AL.
vs.
BOARD OF LIQUIDATION. No. 8303.

U. S. cir. court.

The plea of The Board of Liquidation, appearing through Francis T. Nicholls, its president.

11 Defendant alleges that The Board of Liquidation made defendant herein was established by an act of the legislature of Louisiana as an instrumentality for the investigation and scrutiny of all pretended obligations of the State; that its functions are not private; that as a corporate body it acts solely as an agency of the State, and defendant alleges that complainants in their suit are seeking to establish against the State of Louisiana a large indebtedness, and that their proceedings is in reality a suit against the State of Louisiana.

And defendant alleges that of such suit against the State this honorable court has no jurisdiction.

And the defendant prays the judgment of this hon. court whether The Board of Liquidation should be compelled to make any further answer to complainants' bill, and prays to be hence dismissed with costs.

(Signed) J. C. EGAN,
Ass't Att'y General.

Consented that this plea may be filed and decree pro confesso set aside.

KENNARD, HOWE & PRENTISS.

12 *Motion and order: Pro confesso set aside.—Extract from minutes, November term*, 1877.

NEW ORLEANS, *Thursday, February 28th*, 1878.

Court met pursuant to adjournment. Present Hon. E. C. Billings, district judge.

HARRISON DURKEE ET AL.
vs.
BOARD OF LIQUIDATION. No. 8303.

Considering the consent of counsel on file, ordered that the decree pro

confesso entered on the 8th day of February, instant, be set aside and that the defendants may file their plea.

Entry at rules.—Extract from chancery order book, February 28th, 1878.

HARRISON DURKEE
vs.
BOARD OF LIQUIDATION. } No. 8303.

The Board of Liquidation by its president, Francis T. Nicholls, has this day, through J. C. Egan, ass't att'y gen'l of the State of Louisiana, filed the plea of said Board of Liquidation to the jurisdiction of the court.

13 *Motion and order: plea fixed.—Extract from minutes of March 2d, 1878.*

H. DURKEE ET AL.
vs.
BOARD OF LIQUIDATION. } No. 8303.

On motion of Kennard, Howe and Prentiss, solicitors for complainants, ordered that the plea to the jurisdiction be set for trial for Saturday, March 9th, 1878, at 11 a. m., and that defendants be notified.

Submission of plea.—Extracts from minutes of March 9th, 1878.

H. DURKEE ET AL.
vs.
BOARD OF LIQUIDATION. } No. 8303.

This cause came on to be heard on the defendant's plea to the jurisdiction, and having been argued by Kennard, Howe & Prentiss for complainants and Egan, assistant attorney-general for the defendant, the court took time to consider and allowed counsel one week to furnish briefs.

14 *Order: plea overruled.—Extract from minutes of March 26th, 1878.*

HARRISON DURKEE ET AL.
vs.
THE BOARD OF LIQUIDATION. } No. 8303.

This cause came on to be heard on the plea to the jurisdiction of the court, and was argued by counsel. On consideration whereof, it is ordered that the said plea be overruled.

Answer.—Filed April 6th, 1878.

U. S. circuit court.

HARRISON DURKEE ET AL.
vs.
THE BOARD OF LIQUIDATION. } No. 8303.

The answer of The Board of Liquidation, the above named defendant, to the bill of complaint of the above named plaintiffs.

In answer to the said bill The Board of Liquidation says:
Defendant admits that pl'ffs are the owners and holders of the bonds

or negotiable instruments described in their bill of complaint and
15 that the said bonds or negotiable instruments were issued under act 95 of the general assembly of Louisiana, approved April 20th, 1871, and defendant admits that each of said bonds are for the sum of one thousand dollars and that they are held by the persons as set forth and alleged in pl'ffs' bill of complaint.

Defendant admits that by act No. 3, of 1874, the legislature of Louisiana did provide for the exchange of the valid obligations and bonds of the State for certain consolidated bonds therein provided to be issued by the board of liquidation, and defendant admits that it was the duty of the said board to make such exchange, and defendant admits that if said board should refuse to make such exchange of any valid bonds, that it was provided in said act that the holder of such rejected bond should have an action against said board to have such rejected bond declared valid and fundable by a proper decree.

But your respondent denies that the said bonds in complainants
16 bill described are valid bonds of the State and as such contemplated by the said act as fundable. And defendant avers that the State received no consideration whatever for said issue of bonds; that the obligation to guarantee the second mortgage bonds of the New Orleans, Mobile and Chattanooga Railroad Company, the professed purpose of their issuance, as recited in the title of the act 95 of the general assembly approved April 20th, 1871, had ceased to exist before the passage of said act 95 of 1871. That said act could not and did not create a debt of the State which is fundable, and defendant avers that the funding of said unlawfully issued bonds would violate the letter and spirit of act No. 3, approved Jan. 24, 1874, and lessen the value of the State securities, to the prejudice of the holders thereof.

Defendant further answering admits that the State board of liquidation has refused to exchange the bonds in pl'ffs' bill described, and that it did allege as especial and peremptory grounds for refusal the
17 said acts No. 11, of 1875, and act No. 86, of 1876. But defendant denies that said acts are unconstitutional, null and void, as charged by pl'ffs, as in conflict either with art. 1, sec. 10, par. 1, of the Constitution of the United States, or articles 73 and 110 of the constitution of Louisiana, as alleged in pl'ffs' bill.

But defendant, further answering, avers that both of said acts are valid and constitutional. That act No. 3, of 1874, simply proposed a scheme of settlement with the creditors of the State, which the State had the right and power, at any time, to alter, modify or withdraw, before acceptance. That by act No. 11, of 1875, the board of liquidation was prohibited from issuing any bonds in exchange for any outstanding bonds of the State until the legality and validity of each and every issue of bonds shall have been determined to be valid by the supreme court of Louisiana. Defendant avers that no decree has been rendered by the supreme court of this State declaring the said bonds in
18 pl'ffs' bill described, to be valid, and until such decree shall be rendered, defendant has no authority or power to exchange said bonds for consolidated bonds.

Defendant admits that the bonds described in pl'ffs' bill were issued under act No. 95 of 1871, but defendant avers that the said act in providing for the said issue of bonds was unconstitutional, for the reason that it provided for an issue of two million five hundred thousand dollars, in contravention of the amendment of the constitution of the State then in force limiting the State debt to $25,000,000. And defendant avers that said act has been declared unconstitutional in the suit entitled

State vs. Clinton and Dubuclet, No. 5768 of the docket of the supreme court of Louisiana.

Defendant, further answering, denies that plaintiffs are, as alleged, holders of the said bonds for value before maturity, and in good faith, as alleged, and hold pl'ffs to strict proof thereof.

19 And defendant, now specially answering, says that it, the said defendant, is a creature of the legislature of Louisiana, established for the exercise of specific and definite powers belonging to the sovereignty of the State; that these powers and functions are appointed in the act No. 3 of 1874, creating the board of liquidation, and in the further acts amendatory thereof; that by act No. 11, of the general assembly, approved May 17, 1875, it is expressly prohibited from exchanging any bond or bonds until the validity of the issue shall have been finally passed upon by the supreme court of the State of Louisiana.

Defendant, further answering, says that by act 86 of the legislature of the State of Louisiana, approved April 17, 1876, these particular bonds sued on, and exhibited herein by pl'ffs, are declared null and void, and defendant, The Board of Liquidation, is prohibited from issuing any consolidated bonds of the State in exchange for the said bonds.

20 And this defendant submits to this hon. court that all and every of the matters in said pl'ffs' bill mentioned and complained of are matters which may be tried and determined at law by a suit instituted in a court of competent jurisdiction, in the parish of Orleans, State of Louisiana, as provided for by law, and that the pl'ffs are not entitled to relief from a court of equity, and this defendant hopes he shall have the same benefit of this defence as if he had demurred to pl'ffs' bill.

And this defendant prays to be hence dismissed with costs and charges in this behalf wrongfully sustained.

(Signed) J. C. EGAN,
Ass't Att'y General.

Entry at rules.—Extract from chancery order book, April 10th, 1878.

HARRISON DURKEE ET AL. *vs.* THE BOARD OF LIQUIDATION. } No. 8303.

The complainants have this day, by their solicitors, Kennard, Howes and Prentiss, filed their replication to the answer of the defendant herein.

21 *Replication.—Filed April 10th, 1878.*

U. S. circuit court.

HARRISON DURKEE ET AL. *vs.* THE BOARD OF LIQUIDATION. }

The replication of the complainants to the answer of The Board of Liquidation, defendant.

These repliants, saving to themselves all advantage of exception to the manifest insufficiences of the said answer, for replication thereto says:

That they will aver and prove their said bill to be true, certain and sufficient in the law to be answered unto, and that the answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant, without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, confessed, and avoided, traversed or denied is true; all which matters and things these repliants are and will be ready to aver and prove as this honorable court shall direct, and they humbly
22 pray as in and by their said bill they have already prayed.

April 9th, 1878.

(Signed) KENNARD, HOWE & PRENTISS,
Sols. for Compl't.

Submission of cause.—Extract from minutes of June 7th, 1878.

HARRISON DURKEE ET AL.
vs.
BOARD OF LIQUIDATION. } No. 8303.

This cause came on to be heard upon the pleadings and proofs, and having been argued by Kennard, Howe & Prentiss, for complainants, and J. C. Egan, ass't att'y general, for the defendant, the court took time to consider.

Note of evidence.—Filed June 7th, 1878.

U. S. circuit court.

HARRISON DURKEE ET AL.
vs.
BOARD OF LIQUIDATION.

It is agreed that this cause be set for a hearing on the pleadings and the following proofs:

Proofs or note of evidence. Plaintiffs offer bonds sued on, one
23 to be used as sample of all and referred to in original on appeal if appeal be taken.

Plaintiffs offer affidavits by several plaintiffs in regard to requisition of bonds.

Cross-examination waived, marked 1 to 16, inclusive.

Plaintiffs offer certificate of State treasurer, and certificates of railway shares to the amount of $2,500,000 therein referred to. State treasurer's certificate marked A 1. Certificates of stock are in printed record A 2.

Defendants offer record in case of State vs. Clinton et al., Williams & Guion, intervenor, No. 5768 of the supreme court of Louisiana, and No. 757 supreme court of the United States.

(In printed record annexed.)

The several acts of the legislature referred to in the pleadings and all the acts refer'ing to these bonds, or the funding plan, are agreed to be considered in evidence, and may be referred to in the printed session laws of Louisiana, whether in this court or on appeal.

All the documents and testimony in the suit No. 5768, sup.
24 court of Louisiana, No. 757, Sup. Court of U. S., are considered in evidence, subject to same objections as when offered in that case.

It is conceded that Attorney-General Belden retired from office in Nov., 1872.

(Signed) KENNARD, HOWE & PRENTISS.
(do.) J. C. EGAN, *Ass't Att'y-General.*

Affidavit of William Mertens.—Filed June 7th, 1878.

U. S. circuit court, district of Louisiana. In equity.

HARRISON DURKEE ET AL.
vs.
BOARD OF LIQUIDATION.

Suit on bonds, under act 95 of 1871.

U. S. OF AMERICA:

William Mertens, of the firm of L. Von Hoffman & Co., of New York, being duly sworn, says that the twenty-eight bonds of one thousand ($1,000) dollars each of the State of Louisana, held by deponent's firm, L. Von Hoffman and Co., and sued upon in this case, were acquired by deponent's firm in good faith and for value in the regular course of business, as follows:

Three thousand dollars ($3,000) of the said bonds at seven
25 hundred and fifty ($750) for each bond on the 3rd July, 1872.

Thirteen thousand dollars ($13,000) of the said bonds in December, 1874, at six hundred dollars ($600) for each bond.

Twelve thousand dollars ($12,000) of the said bonds on the 24th March, 1876, at two hundred and fifty dollars ($250) for each bond.

(Signed) WILLIAM MERTENS.

Sworn to before me this 18th day of April, 1878.

(Signed) EDWARD L. OWEN,
U. S. Commissioner for the Southern Dist. of New York.

Affidavit of Richard Irvin, jr.—Filed June 7th, 1878.

U. S. circuit court, dist. of Louisiana. In equity.

HARRISON DURKEE ET AL.
vs.
BOARD OF LIQUIDATION.

Suit on bonds, under act 95 of 1871.

U. S. OF AMERICA, *ss:*

Rich'd Irvin, jr., of the firm of R. Irvin & Co., being duly sworn, says that the 84 bonds held by deponent's firm and sued upon in this case were acquired by deponent's firm on or about the 21st day of
26 November, 1873, in good faith and for value in the regular course of business, at the price of six hundred and sixty-six dollars for each bond.

(Signed) RICH'D IRVIN, JR.

Subscribed and sworn to before me this 17th day of April, 1878.

(Signed) EDWARD L. OWEN,
U. S. Commissioner for the Southern District of New York.

Affidavit of William M. Clarke.—Filed June 7th, 1878.

U. S. circuit court, district of Louisiana. In equity.

HARRISON DURKEE ET AL.
vs.
BOARD OF LIQUIDATION.

Suit on bonds, under act 95 of 1871.

U. S. OF AMERICA,
Southern District of New York, ss:

William M. Clarke, being duly sworn, says that the seven thousand dollars in bonds held by deponent and sued upon in this case were acquired by deponent on or about the first day of July, 1872, in good faith and for value in the regular course of business, at the price of seventy-one.

(Signed) WILLIAM M. CLARK.

27 Subscribed and sworn to before me the 19th day of April, 1878.

(Signed) EDWARD L. OWEN,
U. S. Commissioner for the Southern Dist. of New York.

Affidavit of Oliver Ames.—Filed June 7th, 1878.

United States circuit court, district of Louisiana. In equity.

HARRISON DURKEE ET AL.
vs.
BOARD OF LIQUIDATION.

Suit on bond, under act 95 of 1871.

UNITED STATES OF AMERICA, *ss:*

Oliver Ames, being duly sworn, says that the $260,000 bonds, numbered as follows: 151–157, inc.; 163–166, inc.; 629, 1017, 1018, 1028–1032, inc.; 1086–1100, inc.; 1230–1249, inc.; 1254–1275, inc.; 1473–1475, inc.; 1480–1485, inc.; 1508–1545, inc.; 1561, 1674, 1972, 2000, 2013, 2016, 2051, 2091, 2092, 2096, 1496–1499, inc.; 2111–2140, inc.; 2311, 2313, inc.; 2349–2355, inc.; 2368–2369, inc.; 2395–2400, inc.; 2421–2434, inc.; 2446–2455, inc.; 2463–2470, inc.; held by deponent and sued upon in this case, were acquired by deponent's father, on or about the fourth day of June, 1872, and at subsequent periods, in good faith and for

28 value in the regular course of business, at an average price of over $750 p'r bond, and have since become the property of this deponent.

(Signed) OLIVER AMES.

COMMONWEALTH OF MASSACHUSETTS,
County of Suffolk, City of Boston, ss:

On this twenty-ninth day of *of* April, A. D. 1878, before me, Samuel Jamison, a notary public in and for Suffolk County, residing in Boston, personally came the within-named Oliver Ames and subscribed and swore to the within certificate before me, and did on oath depose and say that the matters and things therein set forth were true.

Witness my hand and official seal, at Boston, this 29th day of April, A. D. 1878.

[SEAL.] (Signed) SAMUEL JAMISON,
Notary Public in and for Suffolk County.

Affidavit of George Bliss.—Filed June 7th, 1878.

U. S. circuit court, district of Louisiana. In equity.

HARRISON DURKEE
vs.
THE BOARD OF LIQUIDATION.

Suit on bonds, under act 95, 1871.

29 U. S. OF AMERICA, *ss:*

George Bliss, of the firm of Morton, Bliss & Co., being duly sworn, says that the thirty-one bonds, of one thousand dollars each, held by deponent's firm, acquired by deponent's firm, partly in July, 1872, partly in Dec'r, 1873, and partly in Sept'r, 1875, in good faith and for value in the regular course of business, at the price of between fifty and fifty one cents on the dollar.

(Signed) GEORGE BLISS.

STATE OF NEW YORK,
City & County of New York, ss:

Be it remembered that on the 17th day of April, 1878, before me, the undersigned, N. Pendleton Schenck, a commissioner duly commissioned and qualified by the executive authority, and under the laws of the State of Louisiana, personally appeared George Bliss, to me known to be the individual named in the above affidavit, and subscribed and swore to the same.

In witness whereof I have hereto set my hand and affixed my official seal the day and year aforesaid.

[SEAL.] (Signed) N. PENDLETON SCHENCK,
Com'r of Louisiana in New York.

30 *Affidavit of Theodore Gilman.—Filed June 7th*, 1878.

United States circuit court, district of Louisiana. In equity.

HARRISON DURKEE ET AL.
vs.
BOARD OF LIQUIDATION.

Suit on bonds, under act 95 of 1871.

UNITED STATES OF AMERICA, *ss:*

Theodore Gilman, of the firm of Gilman, Son & Co., being duly sworn, says that the one hundred (100) bonds held by deponent's firm and sued upon in this case, were acquired by deponent on or about the 22d day of April, 1873, in good faith and for value in the regular course of business, at the price of six hundred and forty-one dollars and four cents ($641.04) for each bond of one thousand dollars.

(Signed) THEODORE GILMAN.

Subscribed and sworn to before me this 18th day of April, 1878.
(Signed) EDWIN L. OWEN,
U. S. Commissioner for the Southern District of New York.

31 *Affidavit of Robert L. Cutting, jr.—Filed June 7th*, 1878.

U. S. circuit court, district of Louisiana. In equity.

HARRISON DURKEE ET AL.
vs.
BOARD OF LIQUIDATION.

Suit on bonds, under act 95 of 1871.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

Robert L. Cutting, jr., being duly sworn, says that the sixty-nine thousand bonds held by deponent's firm, R. L. Cutting, jr., & Co., and sued upon in this case, were acquired by deponent's said firm of R. L. Cutting, jr., & Co. on or about the twenty-ninth day of June, 1872, in good faith and for value in the regular course of business, at the price of seventy-five per cent.
(Signed) ROBERT L. CUTTING, JR.

Subscribed and sworn to before me this April 18th, 1878.
(Signed) EDWIN L. OWEN,
U. S. Commissioner for the Southern Dist. of New York.

32 *Affidavit of Samuel Sloan.—Filed June 7th*, 1878.

U. S. circuit court, district of Louisiana. In equity.

HARRISON DURKEE ET AL.
vs.
BOARD OF LIQUIDATION.

Suit on bonds, under act 95 of 1871.

U. S. OF AMERICA,
Southern District of New York, ss:

Samuel Sloan, being duly sworn, says that the forty-six bonds held by deponent and sued upon in this case were acquired by deponent on or about the first day of July, 1872, in good faith and for value in the regular course of business, at the price of 75.
(Signed) SAM. SLOAN.

Sworn to and subscribed before me.
(Signed) EDWIN L. OWEN,
U. S. Commissioner for the Southern District of New York.

Affidavit of J. L. Macaulay.—Filed June 7th, 1878.

U. S. circuit court, district of Louisiana. In equity.

HARRISON DURKEE ET AL.
vs.
BOARD OF LIQUIDATION.

On suit bonds, under act 95 of 1871.

U. S. OF AMERICA, *ss:*

33 John L. Macaulay, being duly sworn, says that the thirty bonds held by deponent and sued upon in this case were acquired by deponent on or about the fourth day of June, 1872, in good faith and for value in the regular course of business, at the price of seven hundred and fifty dollars for each bond.

(Signed) J. L. MACAULAY.

Subscribed and sworn to before me April 17th, 1878.

(Signed) EDWIN L. OWEN,
U. S. Comm'r for the Southern Dist. of New York.

Affidavit of John Steward.—Filed June 7th, 1878.

U. S. circuit court district of Louisiana. In equity.

HARRISON DURKEE ET AL.
vs.
BOARD OF LIQUIDATION.

Suit on bonds, under act 95 of 1871.

U. S. OF AMERICA, *ss:*

John Steward, being duly sworn, says that the seventy-five bonds held by deponent and sued upon in this case were acquired by deponent *and sued upon in this case were acquired by deponent* on or about the second day of July, 1872, in good faith and for value in the regular
34 course of business at the price of $710 (seven hundred and ten).

(Signed) JOHN STEWARD.

Sworn to before me this 18th day of April, 1878.

(Signed) EDWIN L. OWEN,
U. S. Commissioner for the Southern District of New York.

Affidavit of Harrison Durkee.—Filed June 7th, 1878.

U. S. circuit court, dist. of Louisiana. In equity.

HARRISON DURKEE ET AL.
vs.
BOARD OF LIQUIDATION.

Suit on bonds, under act 95 of 1871.

U. S. OF AMERICA,
State, City & County of New York, ss:

Harrison Durkee, being duly sworn, says that the thirty bonds held

by deponent and sued upon in this case were acquired by deponent on or about the first day of July, 1872, in good faith and for value in the regular course of business, at the price of seven hundred and fifty dollars per bond.

(Signed) H. DURKEE.

Subscribed in my presence and sworn to before me, by the above-
35 named Harrison Durkee, this 18th day of April, A. D. 1878.
Witness my hand and official seal.

[SEAL.] (Signed) CHARLES NETTLETON,
Commissioner for La. in New York, 117 Broadway, N. Y. City.

Affidavit of John T. Hanemann.—Filed June 7th, 1878.

U. S. circuit court, district of Louisiana. In equity.

HARRISON DURKEE ET AL.
vs.
BOARD OF LIQUIDATION.

Suit on bonds, under act 95 of 1871.

U. S. OF AMERICA:

John T. Hanemann, being duly sworn, says that the $53,000 Louisiana State bonds, Nos. 167, 173–193, 194–201, 204–217, 218–226, held by deponent's firm, Knoop, Hanemann & Co., and sued upon in this case, were acquired by deponent's firm, Knoop, Hanemann & Co., on or about the 17th day of January, 1873, in good faith and for value in the regular course of business at the price of $550. Five hundred and fifty dollars per bond.

New York, April 18, 1878.

(Signed) JNO. T. HANEMANN.

Subscribed & sworn to before me this 19th day of April, 1878.

(Signed) EDWIN L. OWEN,
U. S. Comm'r Dist. of New York.

36 *Affidavit of J. M. Munoz.—Filed June 7th, 1878.*

U. S. circuit court, district of Louisiana. In equity.

HARRISON DURKEE ET AL.
vs.
BOARD OF LIQUIDATION.

Suit on bonds, under act 95 of 1871.

U. S. OF AMERICA,
Southern District of New York:

J. M. Munoz, being duly sworn, says that the forty-six bonds held by deponent and sued upon in this case were acquired by deponent on or about the first day of July, 1872, in good faith and for value, in the regular course of business, at the price of seven hundred and fifty dollars for each bond.

(Signed) JNO. M. MUNOZ.

Subscribed and sworn to before me this 7th day of May, 1878.

(Signed) EDWIN L. OWEN,
U. S. Comm'r for the Southern Dist. of N. York.

Affidavit of Theresa A. Anderson.—Filed June 7th, 1878.

U. S. circuit court, district of Louisiana. In equity.

HARRISON DURKEE ET AL.
vs.
37 BOARD OF LIQUIDATION.

Suit on bonds, under act 95 of 1871.

U. S. OF AMERICA,
Southern District of New York, ss:

Theresa A. Anderson, being duly sworn, says that the forty-two bonds of one thousand dollars each, of the State of Louisiana, held by deponent and sued upon in this case, were acquired by deponent in good faith, in the regular course of business, at the price of five hundred dollars for each bond, on or about April, 1875.

(Signed) THERESA A. ANDERSON.

Subscribed and sworn to before this 23d day of April, 1878.
(Signed) EDWIN L. OWEN,
U. S. Commissioner for the Southern District of New York.

Affidavit of John Pondir.—Filed June 7th, 1878.

United States circuit court for the district of Louisiana.

HARRISON DURKEE ET AL.
vs.
BOARD OF LIQUIDATION.

SOUTHERN DISTRICT OF NEW YORK,
City and County of New York, ss:

38 John Pondir, being duly sworn, says that the bonds owned by deponent and sued upon in this case, and numbered respectively 1990, 1991, 1992, 1993, 1994, 1995, 1996, 2012, 2019, 2025, 2026, 2027, 2028, 2097, 2098, 2204, 2205, 2206, 2207, 2208, 2211, 2214, 2216, 2242, 2243, 2244, 2245, 2247, 2248, 2249, 2250, 2326, 2328, 2329, 2330, 2331, 2332, 2333, 2456, 2457, 2458, 2459, 2460, 2461, 2327, were acquired by deponent in the year 1872, in good faith and for value, and in the regular course of business, at the price of seventy-five cents on the dollar.

(Signed) JOHN PONDIR.

Sworn to and subscribed before me this 17th day of April, 1878.
[SEAL.] (Signed) JULIUS BINGE,
Notary Public, 209 N. Y. C.

Affidavit of John Bloodgood.—Filed June 7th, 1878.

U. S. circuit court, dist. of Louisiana. In equity.

HARRISON DURKEE ET AL.
vs.
BOARD OF LIQUIDATION.

Suit on bonds under act 95 of 1871.

U. S. OF AMERIÇA:

I, John Bloodgood, being duly sworn, says that the ninety-four

bonds held by deponent's firm of John Bloodgood & Co., sued upon in this case, were acquired by deponent's said firm on or about the fourth of August, 1874, in good faith and for value, in the regular course of business, at the price of about four hundred dollars per bond.

(Signed) JOHN BLOODGOOD.

Subscribed and sworn to before me this 16th day of April, A. D. 1878.

[SEAL.] (Signed) EDWIN F. COREY,
Commissioner from the State of Louisiana in New York.

Treasurer's certificate, marked A. 1.—Filed June 7th, 1878.

STATE OF LOUISIANA, TREASURER'S OFFICE,
New Orleans, June 5th, 1878.

This may certify that I hold in this office, as property of the State, certificates of stock in the New Orleans, Mobile and Chattanooga Railroad Company, received by the State in exchange for bonds issued under act No. 95 of 1871, to the amount at par value of two million five hundred thousand dollars.

Said stock appears to have been subscribed for by the governor of the State, under agreement also on file in this office, dated April 22d, 1871.

Stock deposited in this office June 5th, 1871.

[SEAL.] (Signed) ANT. DUBUALET,
State Treasurer.

Decree.—Entered and filed June 10th, 1878.

U. S. circuit court, dist. of La.

HARRISON DURKEE ET AL. *vs.* BOARD OF LIQUIDATION. } No. 8303.

This cause came on to be heard at this term and was argued by counsel. On consideration whereof it is ordered, adjudged, and decreed that complainants' bill of complaint be dismissed, at their costs to be taxed.

June 10th, 1878.

(Signed) EDWARD C. BILLINGS, *Judge.*

Petition and order for appeal.—Filed June 25th, 1878.

To the Hon. the judges of the circuit court of the United States for the district of Louisiana.

HARRISON DURKEE ET AL. *vs.* THE BOARD OF LIQUIDATION. } No. 8303.

In equity.

The petition of all the complainants herein respectfully showeth:

That they filed their bill herein November 24, 1877; that a plea to the jurisdiction was filed by the defendant February 28, 1878, and thereafter overruled; that an answer was filed by the said defendant April 6, 1878;

that the said cause was heard and tried on the pleadings and proofs on the 7th day of June, 1878, and on the 10th day of June, 1878, a decree was rendered dismissing the bill of complaint.

And the said complainants further show that they appeal from the said final decree dismissing said bill, and from the whole thereof, to the Supreme Court of the United States, and pray that the whole record of the cause may be sent to the said Supreme Court; and that the said Supreme Court will proceed to *leave* the said cause anew, and
42 that the said final decree of the circuit court may be reversed, and a decree may be rendered as prayed for in petitioners' bill of complaint, or such part thereof as may be just, and for costs, and all general and equitable relief.

(Signed) KENNARD, HOWE & PRENTISS,
Sol's for Appellants.

(Signed) W. W. HOWE,
Of Counsel.

Let the appeal prayed for be granted returnable to the next term of the Supreme Court of the United States, and let the bond be fixed at five hundred dollars.

June 20th, 1878.

(Signed) EDWARD C. BILLINGS, *Judge.*

Agreement.—Filed June 26th, 1878.

U. S. circuit court.

No. 8303.

MR. VINOT: The defendant makes no objection to the appeal bond with Mr. T. H. Hunt as surety, and it is agreed that the record offered by def't in case of Williams and Guion, No. 757 of U. S. Supreme Court, may go up in original attached to the transcript.

43 (Signed) J. C. EGAN,
Ass't Att'y General.

JUNE 26TH, 1878.

Bond for appeal.—Filed June 26th, 1878.

U. S. circuit court.

No. 8303.

Know all men by these presents that we, Harrison Durkee, John Pondir, John L. Macaulay, William M. Clarke, Samuel Sloan, J. M. Muñoz, John Steward, Theresa A. Anderson and John J. Anderson, Louis Von Hoffman and William Mertens, Robert L. Cutting & Co., Morton, Bliss & Co., Richard Irvin & Co., William H. Guion, Knoop, Hanneman & Co., Gilman, Son & Co., The National Bank of Commerce, John Bloodgood & Co., and Oliver Ames, as principals, and Thomas H. Hunt, of New Orleans, La., as surety, are held and firmly bound unto the Board of Liquidation of the State of Louisiana, defendant and appellee, in the full and just sum of five hundred dollars, to be paid to the said obligee, its certain attorney, executors, administrators, or assigns, to which payment, well and truly to be made, we bind

ourselves, our heirs, executors, administrators, jointly and severally, by these presents, sealed with our seals, and dated this 24th day of June, in the year of our Lord one thousand eight hundred and seventy eight.

Whereas lately at a circuit court of the United States, fifth judicial circuit, holding sessions in and for the district of Louisiana, on the 10th day of June, 1878, in a suit depending in said court, wherein the said obligors were plaintiffs, and the said obligee defendant, a decree was rendered against the said plaintiffs, and the said plaintiffs have taken an appeal from the said final decree to and returnable to the next term of the Supreme Court of the United States:

Now the condition of the above obligation is such, that if the said obligors shall prosecute their said appeal to effect, and answer all costs if they fail to make their plea good, then the above obligation to be void else to remain in full force and virtue.

(Signed) HARRISON DURKEE.
JOHN PONDIR.
JOHN L. MACAULAY.
WM. M. CLARKE.
SAMUEL SLOAN.
J. M. MUNOZ.
JOHN STEWARD.
THERESA A. ANDERSON.
JOHN J. ANDERSON.
LOUIS VON HOFFMAN.
WILLIAM MERTENS.
ROBERT L. CUTTING & CO.
MORTON, BLISS & CO.
RICHARD IRVIN & CO.
WILLIAM H. GUION.
KNOOP, HANNEMAN & CO.
GILMAN, SON & CO.
THE NATIONAL BANK OF COMMERCE.
JOHN BLOODGOOD & CO.
OLIVER AMES.
Per W. W. HOWE, *Att'y.*
(Signed) THOS. H. HUNT.

In presence of—
(Signed) ROB'T FABRE.

UNITED STATES OF AMERICA:

Circuit court of the United States, fifth circuit and district of Louisiana.

CLERK'S OFFICE.

I, Francis A. Woolfley, clerk of the circuit court of the United States for the fifth circuit and district of Louisiana, do hereby certify that the foregoing 47 pages manuscript, together with the printed record annexed comprising 137 pages, contain and form a full, complete, true, and perfect transcript of the record and proceedings had, together with all the evidence adduced on the trial of the case of Harrison Durkee et al. versus The Board of Liquidation of the State of Louisiana, No. 8303 on the docket, so far as the same now remain of record or on file in said court.

Witness my hand and the seal of said court, at the city of New Orleans, this 31st day of July, A. D. 1878.

[SEAL.] F. A. WOOLFLEY, *Clerk.*

I, Edward C. Billings, United States judge for the district of Louisiana, do certify that Francis A. Wootley, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and district of Louisiana, was, at the time of signing said certificate, and is now, the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand at the city of New Orleans, in said district, this 31st day of July, A. D. 1878.

EDWARD C. BILLINGS, *Judge.*

47 THE UNITED STATES OF AMERICA:

Circuit court of the United States, district of Louisiana.

The President of the United States to the Board of Liquidation of the State of Louisiana, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington on the second Monday of October next, pursuant to a petition and an order for appeal filed in the clerk's office of the circuit court of the United States for the fifth circuit and district of Louisiana, wherein Harrison Durkee, John Ponder, John L. Macaulay, William M. Clarke, Samuel Sloan, J. M. Minoz, John Steward, Theresa A. Anderson, John P. Anderson, Louis Von Hoffmann, and William Mertens, composing the firm of L. Von Hoffmann & Company, Robert L. Cutting & Company, Morton, Bliss & Company, Richard Irwin & Company, William H. Guion, Knoop, Hanemann & Company, Gilman, Son & Company, The National Bank of Commerce, John Bloodgood & Company, and Oliver Ames are complainants and appellants and you are defendant and appellee, to show cause, if any there be, why the judgment rendered against the said complainants and appellants as in said petition for appeal mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 26th day of June, in the year of our Lord one thousand eight hundred and seventy-eight.

EDWARD C. BILLINGS, *Judge.*

48 (Indorsed:) United States circuit court. No. 8303. Harrison Durkee et al. vs. The Board of Liquidation of the State of Louisiana. Citation.

Marshal's return.

Received Jun. 26, 1878, by the U. S. marshal, and on the 16th day of July, 1878, served a true copy of the within citation on the Board of Liquidation of the State of Louisiana through its president, Francis T. Nichols, by handing the same to him, the said Francis T. Nichols, in person, in the city of New Orleans.

W. G. ELLIOTT,
Dy U. S. Marshal.

On this 30 day of July, 1878, personally appeared before me William G. Elliott, a deputy U. S. marshal for the district of Louisiana, and makes oath that he served a copy of the within citation on the Board of

Liquidation of the State of Louisiana through Francis T. Nicholls, the president thereof, as stated in his official capacity hereto.

W. G. ELLIOTT.

Sworn to and subscribed before me this 26th day of Dec., 1878.

E. H. ARNOLD, *Dep. Clerk.*

In the Supreme Court of the United States. Oct. Term, 1878.

DURKEE
vs.
THE STATE BOARD OF LIQUIDATION. } No. 873.

It is agreed between the parties to this cause that the copy of the transcript of the case of Williams & Gordon vs. The State of Louisiana, which is an exhibit to the transcript in this case, shall not be printed as a part of the transcript in this case, and the clerk is requested not to print it.

It is agreed between the parties that the transcript in Williams & Gordon vs. The State of Louisiana is now printed shall be deemed to be and taken as an exhibit of the transcript in the present case.

June 22, 1879.

H. N. OGDEN, *Atty for Pltff.*
KENNARD, HOWE & PRENTISS,
Counsel for Pltff.
JAMES McHENRY, *Atty for Deft.*

Indorsed: Louisiana Board of Liquidation. No. 873. Oct. term, '78. Stipulation.

Indorsed: Supreme Court U. S. 1878, October Term. No. 564. Harrison Durkee & als, appts, vs. The Board of Liquidation of the State of Louisiana. Stipulation as to printing, &c as to record in No. 195 as part of record in this case. Filed 29th January, 1879.

Indorsement on cover: No. 565. Harrison Durkee, Levin Pondet et al., appellants, vs. The Board of Liquidation of the State of Louisiana. Louisiana C. C. U. S. Filed 11th October, 1878.

SUPREME COURT, U.S.
FILED
MAR 24 1881
JAMES H. MCKENNEY, CLERK

No. 265. October Sessions, 1880.

Supreme Court of the United States.

IN EQUITY.

LOUISIANA BOND CASES.

HARRISON DURKEE *et al.* (Plaintiffs below), Appellants,

vs.

THE BOARD OF LIQUIDATION OF THE STATE OF LOUISIANA, Appellees.

Appeal from the Circuit Court of the United States for the District of Louisiana.

BRIEF OF THE APPELLANTS.

W. W. HOWE,

JAMES LOWNDES,

A. SYDNEY BIDDLE,
GEORGE W. BIDDLE,

SIMON STERNE.

Allen, Lane & Scott, Printers, 229-231 South Fifth Street, Philadelphia.

I.

HISTORY OF THE CASE.

This was a suit in equity,[1] brought in the Circuit Court of the United States for the District of Louisiana, by the present appellants, citizens of New York and Massachusetts, on behalf of themselves and all other bondholders similarly situated, against the Board of Liquidation, a Louisana corporation (whose members were all citizens of that State), created by Act No. 3 of 24th January, 1874.

The material averments of the bill[2] were as follows:— The plaintiffs were owners, being purchasers for value without notice and before maturity, of certain valid, negotiable, obligations of the State of Louisiana, being the bonds[3] of that State issued under Act No. 95, of the 20th April, 1871, of the General Assembly of that State. By the act of Assembly of Louisiana, No. 3, of 24th January, 1874, (*post* 19–25) it was enacted that certain designated officials of the State should constitute a committee, known as the Board of Liquidation, whose duty it should be to prepare and issue new bonds of the State, to be signed by the Governor, Auditor, and Secretary of State, and the coupons of which, at the rate of seven per cent., should be signed by the State Auditor and Treasurer. The act then declared that:—

"SECTION 3. *Be it further enacted*, That * * * when so prepared, *said bonds shall be exchanged by the Board of Liquidation for all valid outstanding bonds of the State* * * * at the rate of sixty cents in consolidated bonds for one dollar in outstanding bonds * * *: *Provided*, That

[1] 1. The numerals in the foot notes refer to the pages of the record.

[2] 1-2.

[3] The bonds are the same as those in suit in the case of Williams & Guion *vs.* State of Louisiana *et al.*, to be argued with this case.

the holder of any bond or valid warrant rejected by a majority of said Board, may apply by petition to the proper court for relief, and if final judgment shall be rendered in his favor against said Board, *it shall be the duty of said Board to fund his claim* in bonds at the rate provided by this act; * * *

"SEC. 7. *Be it further enacted*, That a tax of five and a half mills on the dollar of the assessed value of all real and personal property in the State is hereby annually levied, and shall be collected for the purpose of paying the interest and principal of the consolidated bonds herein authorized, and the revenue derived therefrom is hereby set apart and appropriated to that purpose and no other. * * * The interest tax aforesaid shall be a continuing annual tax until the said consolidated bonds shall be paid or redeemed, principal and interest, and the said appropriation shall be a continuing annual appropriation during the same period, and this levy and appropriation shall authorize and make it the duty of the Auditor and Treasurer and the said Board respectively to collect said tax annually, and pay said interest, and redeem the said bonds until the same shall be fully discharged, * * *

"SEC. 10. *Be it further enacted*, That any judge, tax collector, or any officer of the State, obstructing the execution of this act, or any part of it, or failing to perform his official duty thereunder, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished," &c., &c.

The bill then averred that the Board of Liquidation had refused to exchange the bonds of the State, held by the complainants, for the consolidated bonds provided by said act, though requested to do so; and had set up as an excuse the provisions of two subsequent acts of Assembly, No. 11, of 17th May, 1875, extra session (*post* 25–9) and No. 86, of 17th April, 1876 (*post* 29–31), which acts the bill averred to be unconstitutional, as being in conflict with article first, section tenth, par. 1, of the Constitution of the United States, forbidding a State to pass any law impairing the obligation of a contract, and being also in conflict with articles 73 and 110 of the Constitution of the State of Louisiana. That the bonds held by the plaintiffs were issued under act No. 95, of 20th April, 1871, in exchange for stock &c., of the New Orleans, Mobile and Chattanooga Railroad Company, which was at the date of the exchange a sol-

vent corporation with about two hundred miles of completed railway, and valuable rolling-stock which had cost upwards of $8,000,000, and that this stock was still in the treasury of the State. The bill *prayed* for a decree declaring the plaintiffs' bonds valid obligations; for discovery, and for further relief.

A plea[1] to the jurisdiction on the ground that the defendants were a mere State agency, and that the suit was in reality against the State of Louisiana, was overruled,[2] and has not been appealed from by the defendants.

The defendants then filed an answer[3] admitting all material facts alleged in the bill, except—

(1) That the bonds in suit were valid bonds, and as such fundable; but they at the same time admitted:—

"That by Act No. 3 of 1874, the Legislature of Louisiana did provide for the exchange of the valid obligations and bonds of the State for certain consolidated bonds, therein provided to be issued by the Board of Liquidation, *and defendant admits that it was the duty of the said Board to make such exchange*, and defendant admits that, if said Board should refuse to make such exchange of any valid bonds, it was provided in said act that the holder of such rejected bond should have an action against such Board to have such rejected bond declared valid and fundable by a proper decree."

(2.) That the acts, No. 11 of 1875, and No. 86 of 1876, were unconstitutional.

(3.) That plaintiffs were holders for value before maturity in good faith.

A replication[4] was then filed, and the bonds sued on were offered in evidence. Testimony[5] was taken, showing that the respective plaintiffs were holders for value without notice before maturity of their respective bonds, and the dates of purchase and prices paid. The State

[1] 4.
[2] 5.
[3] 5–7.
[4] 8.
[5] 9–16.

Treasurer testified[1] that he then (January 5th, 1878,) held in the office of the State Treasurer

"*as property of the State*, certificates of stock in the New Orleans, Mobile and Chattanooga Railroad Company, received by the State in exchange for bonds issued under act, No. 95 of 1871 [being those in suit], to the amount at par value of two million five hundred thousand dollars.

"Said stock appears to have been subscribed for by the Governor of the State, under agreement, also on file in this office, dated April 22d, 1871.

"Stock deposited in this office, June 5th, 1871.

(Signed) "ANT. DUBUCLET,

[SEAL] *State Treasurer.*"

The certificates of this stock held by the State, the record, and all testimony therein (subject to legal objections), in the case (to be argued here with this) of State *vs.* Clinton, *et al.*, Williams & Guion, intervenors, and all pertinent acts of Assembly were offered, and agreed to be, in evidence,[2] with right to either party to refer to the same, and it was admitted[3] that Attorney-General Belden retired from office November, 1872.

The Court (BILLINGS, J.) upon the hearing on bill, answer, replication, and proofs, entered a decree,[4] dismissing the plaintiffs' bill with costs.

II.

ASSIGNMENT OF ERRORS.

The Court below erred:—

(1.) In dismissing the plaintiffs' bill.

(2.) In entering the following decree[4]:—

"This cause came on to be heard at this term, and was argued by counsel. On consideration whereof it is ordered, adjudged, and decreed

---

[1] 16.
[2] 8.
[3] 9.
[4] 16.

that complainants' bill of complaint be dismissed at their costs, to be taxed.

(Signed) " EDWARD C. BILLINGS,
" JUNE 10th, 1878." *Judge.*

(3.) In not entering a decree declaring the complainants' bonds, respectively, valid and legal obligations, and granting such further relief as the plaintiff's case required, as prayed in the bill.

(4.) In refusing to grant any relief.

(5.) In holding that none of the plaintiffs were entitled to any of the relief prayed for.

III

ARGUMENT.

We have shown in our argument in the case of Williams & Guion *vs.* State of Louisiana, et. al., in this court, that the bonds held by the complainants, (all of which are of the same issue of two million five hundred thousand dollars, under Act of Assembly, No. 95 of 20th April, 1871), are valid.

The defense of invalidity was based upon the following ground:—

It was said that the bonds were invalid because they were issued under an act, subsequent in date (1871) to a constitutional amendment (December 15th, 1870) prohibiting an increase of debt beyond a point already passed. That the date of the act was in fact subsequent to the date of the amendment, though expressed to be a compromise of an indebtedness, created by an act (February, 1870) prior to the amendment, because the original debt, created by the last act, had really ceased to exist at the date of

the constitutional amendment (December, 1870), and, of course, at the date of the act under which the bonds were issued (April, 1871), by the non-performance at each of those dates of certain alleged conditions, precedent to the existence of the original debt.

This argument, of course, raised a single defense, consisting of two steps, viz:—

(*a*) Your bonds are invalid because issued under an act of a date later than the constitutional amendment, and thereby prohibited.

(*b*) And the date *is* in fact later than the constitutional amendment, because *not* a compromise of an old debt, valid and subsisting at the date of the adoption of the amendment.

This defense involved a federal question, because if our bonds were in reality a substitute for a prior debt of the State, valid and existing at the date of the amendment, their validity could not be affected by the passage of that amendment; and the decision of the State Court (in the Williams and Guion case), by holding (*a*) that our title was subsequent in date to the amendment, and (*b*) that the amendment avoided the act under which the bonds were issued, interpreted the constitutional amendment so as to impair the obligation of a prior contract, and thus sinned against the Constitution of the United States. This argument is developed at greater length in our brief on jurisdiction in the Williams and Guion case.

To this defense we replied (see our brief on the merits, in the Williams & Guion case) that the bonds in our hands were good on three separate and distinct grounds, each one of which, the others failing, sustains their validity and entitles us to a decree to that effect.

First.—We showed that the act of April, 1871, was a valid compromise of a prior (February, 1870) debt of the State of Louisiana, which debt was valid and existed at

the date of the passage of the constitutional amendment (December, 1870), and at the date of the passage of the act of April, 1871.

(*a.*) The *fact* of compromise was shown by the language of the act of 1871—its title and its recitals—that stock was given by the company as well as the release, and that that stock had not been returned.

(*b.*) The *validity* and *existence* of the former conditional debt (Feb. 1870) was shown by a reference to the statute of 1870; by decisions of the Supreme Court of Louisiana that that debt did exist when the amendment was passed, and must be included in the computation of the valid existing debt of that date.

(*c.*) And it was also shown that the argument of the Supreme Court of Louisiana, to the effect that the original debt (of February, 1870,) had ceased to exist when the amendment was adopted and act of 1871 was passed, because of non-performance of precedent conditions, was wholly erroneous; for

(1.) There were no conditions *precedent.*

(2.) The time for the performance of the conditions *subsequent,* did not lapse for several years after the date of the act of 1871, and after the date of our purchase.

(3.) The recital on the bonds that they were issued "*in pursuance and by authority of*" the act of 1871, was an averment by the State, incapable of contradiction, that all requirements of that act necessary to the validity of the bonds had been duly complied with (Knox *vs.* Aspinwall, 21 Howard, 542); and as the act of 1871 referred to the act of 1870, entitling itself

"An act to relieve the State from its obligation to guarantee the second mortgage bonds of the New Orleans, Mobile & Chattanooga Railroad Company, under an act of the General Assembly, approved February 21st, 1870," &c.

it was also an averment that all conditions, if any, required by the act of February, 1870, and which were essential to the validity of the bonds, had been performed. (Buchanan *vs.* City of Litchfield, Morrison's transcript, February, 1881, 223.)

Secondly.—We showed that, on the ground of public policy, no State court could declare a compromise made by the State Legislature and Executive invalid; the right of compromise by the State with debtors and creditors being inherent in the State Legislature, a right infringed upon by every inquiry through the judiciary into the motives of the law-makers, or the validity of the claim, by or against the State, which formed the subject of compromise.

To this may be added the further argument that the passage of the act of April, 1871, and the recitals in that statute are an emphatic declaration by the State of the existing validity of the debt of February, 1870, thereby compromised, and that this declaration by the Legislature, transcribed upon the bonds, cannot, in suits by innocent holders for value of those bonds, without notice, be inquired into or contradicted by the courts of the State.

Thirdly.—Four decisions had been rendered by the Supreme Court of the Commonwealth of Louisiana, upon reasons for which these and similar bonds must be valid, two of these decisions being prior to our purchase of the bonds, and two being rendered while we held them. Hence, under the doctrine of Gelpcke *vs.* Dubuque, our title can not now be denied by construing

the statute of 1871 contrary to the prior construction of similar statutes.

If we were right, in either of the three preceding points, the court below should have entered a decree, in this case, as prayed in the bill.

The Circuit Court was bound to examine our title and enter a decree in its favor. The United States Court is not bound by the construction by the State court of a statute, where a federal question is raised, or where the question is one of general law. Otherwise the absurd result would follow that, on an appeal to this court from the Supreme Court of the State, this court will reverse where a statute of a State has been wrongly construed in a case involving a federal question, while it must affirm the decision of the federal court, based upon and following, the erroneous construction of the same statute by the State court. No opinion was delivered by the court below, but it has been supposed that that tribunal felt itself bound to follow the decision of the State court in the case of Williams & Guion.

If then, our bonds were valid, and the court below should have declared them so, what further relief were we entitled to? By the act No. 3 of 24 January, 1874 (*post* 19–25), all valid bonds of the State presented by the holder to the Board of Liquidation, defendants, should have been exchanged for the new scaled, bonds at sixty per cent. of the par value. The half-loaf was all that was asked. It was admitted by the answer:—

"That it was the duty of the said Board to make such exchange and that if said Board should refuse to make such exchange of any valid bonds, it was provided in said act that the holder of such rejected bond should have an action against said Board to have such rejected bond declared valid and fundable by a proper decree."

This suit is the action provided by the Act of Assembly to "have such rejected bonds declared valid and fundable by a proper decree." The only remaining question is whether the remedy given in 1874 can be withdrawn or impaired in 1875 and 1876.

The act No. 11 of 17th May, 1875, provides:—

That any tax-payer might question the validity of any doubtful obligations of the State designated therein, and that no such obligation should be funded by the Board of Liquidation

"until said bonds or warrants shall first, *by final decree of the Supreme Court of the State of Louisiana*, have been declared legal and valid obligations against the State of Louisiana, and that the same were issued in strict conformity to law, and not in violation of the Constitution of this State or of the United States, and for a valid consideration."

Now the meaning of this is one of two things—either it is intended to authorize a speedy testing of the validity of the obligation in a proper manner, and the designation of the State court is equivalent to the words "by due procedure at law in the courts having jurisdiction of the subject-matter;" or it is intended to exclude the Federal courts from their jurisdiction of these cases. If the first suggestion be correct, we may for the present concede its constitutionality. In that event the law is simply this:—There shall be no funding until the validity of the bonds is finally ascertained in a proper proceeding in the appropriate courts. If, therefore, this court holds these bonds valid (*a*) in the Williams & Guion suit, we are within the terms of the act, for that decision is, in law, the decision of the Supreme Court of the State of Louisiana (the judgment of which court will then be reversed); or, if (*b*) in the present suit this court should be of opinion that the bonds are valid, and that the Circuit Court should have so declared, we are still within the

terms of the act of 1875, even though this court should be of opinion that for some other reason, external to this suit, the judgment in the Williams & Guion case must be affirmed. In the latter alternative a competent court of final jurisdiction will have declared the bonds valid, existing, obligations.

If, however, the act of 1875 means more than this, and *Federal jurisdiction* in these cases is sought to be excluded, the statute is unconstitutional in seeking by implication to deprive the Federal courts of jurisdiction.

"Whenever," said Mr. Justice FIELD (Railway Company *vs.* Whitton, 13 Wallace, page 286), "a general rule as to property or personal rights, or injuries to either, is established by State legislation, its enforcement by a Federal court in a case between proper parties is a matter of course, and the jurisdiction of the court in such case is not subject to State limitation." Citing Suydam *vs.* Broadnax, 14 Pet., 67; Union Bank *vs.* Jolly's Adm., 18 How., 506; Hyde *vs.* Stone, 20 How., 170; Payne *vs.* Hook, 7 Wall., 425.

The same principle was decided in Insurance Company *vs.* Morse, 20 Wallace, 450–1. In that case the State of Wisconsin had enacted that any foreign fire insurance company might do business in the State, having first appointed an attorney, containing an agreement

"that such company will not remove the suit for trial into the United States Circuit Court or Federal Court, and file in the office of the Secretary of State a written instrument, duly signed and sealed, certifying such appointment, which shall continue valid until another attorney be substituted."

A case of lawful removal having arisen, the defendant, a New York corporation, filed a petition in the State court for permission to remove. That court held that there could be no removal by reason of the statute quoted, and the Supreme Court of Wisconsin affirmed that judgment. This court, on error, reversed the judgment.

"Every citizen," said Mr. Justice HUNT, "is entitled to resort to all the courts of the country, and to invoke the protection which all the laws or all those courts may afford him. * * * * * * *

"State legislation can not confer jurisdiction upon the Federal courts, nor can it limit or restrict the authority given by Congress in pursuance of the Constitution. This has been held many times (Railway Company *vs.* Whitton, 13 Wallace, 286; Payne *vs.* Hood, 7 *id.*, 427; The Moses Taylor, 4 *id.*, 411, and cases cited, (453.) * * * * *

"The State of Wisconsin can regulate its own corporations and the affairs of its own citizens, in subordination, however, to the Constitution of the United States.

* * * A foreign citizen, whether natural or corporate, in this respect possesses a right not pertaining to one of her own citizens. There must necessarily be a difference between the status of the two in this respect (455).

Lastly, does the act of 1876 debar the plaintiffs from success in this proceeding?

That act was passed avowedly to defeat the plaintiffs' rights. Having by the acts of 1874 and 1875 provided that all valid bonds should be funded, and that all doubtful bonds should be first tested by process of law, the legislature now erects itself into a court, and fulminates injurious recitals against the property created and set afloat by their predecessors in office.

The act, passed April 17th, 1876, upon the very day of the decision of the Supreme Court of the State of Louisiana in the Williams & Guion case, holding these bonds to be void, recites the reasons given by the Supreme Court, and then declares that—

"The said Board of Liquidation is hereby prohibited from funding and from issuing any consolidated bonds of this State in exchange for any portion of the two and a half millions of bonds issued for stock in said railroad company under act No. 95, approved April 20th, 1871, *it being hereby declared and proclaimed that* the State received no consideration whatever for said issue of bonds; that the obligation of the State to endorse bonds in favor of the said company had ceased to exist before the passage of said act No. 95 of 1871; that said act could not and did not create a debt of the State which is fundable; and that the funding of said unlawfully issued bonds would violate the letter and spirit of said act No. 3, approved January 24th, 1874, impair the State's credit, and thereby lessen the value of State securities to the prejudice of the holders thereof."

It is manifest that all portions of this law which attempt to modify, repeal, or violate any provisions of the act of April, 1871, are, as to the plaintiffs, of no force. Our rights, being founded upon contract, can be discharged by no subsequent statute without our consent. Hence, admittedly, if our title is good, so much of this act as *impairs* it must fall. But the question remains as to the remainder of the act.

Where the statutes of a State convey privileges to negotiable instruments, thereby authorized, (*e. g.* that the bonds of a corporation may be received in payment of State taxes; or, as by the act of 1874, that the bonds issued under act No. 95, of April, 1871, may, if valid, be funded by the Board of Liquidation), these privileges are not personal, but are attached to the instrument in the hands of its owner, and can not be withdrawn by subsequent repealing legislation.

This is true, even though the privileges are sought to be repealed by State legislation enacted prior to the accruing of the holder's title.

In other words, not only are we entitled to rely upon the provisions of the acts of 1869, 1870, and 1871, which are irrepealable as against all *bona fide* holders of these bonds, *though the title accrued subsequently to the attempted repeal*, but the provisions of the (Funding) act of 1874 are also (at our option) part of the contract made with us, and no provision of that contract can be repealed or impaired thereafter.

The principle is that the new contract attaches to the bond as soon as made, and becomes an additional provision for the benefit of the respective holders, and being part of the security itself can not be affected, whether the security remain in the hands of the holder at the date of the new act, or come into his hands after that act be repealed.

This proposition was laid down in Woodruff *vs.* Trapnall, 10 Howard, at 206. In that case the legislature of Arkansas had, in 1836 chartered a bank with the proviso—

"that the bills and notes of said institution shall be received in all payments of debts due to the State of Arkansas."

In 1845 this provision was repealed. It was held that the notes which were in circulation at this time were not affected by the repeal; and it was held, further, that it mattered not that the person who held the early issue, in litigation, had acquired them subsequently to the date of the repeal.

"That the State," said Mr. Justice McLEAN, "had the right to repeal the above section may be admitted. And the emissions of the bank subsequently are without the guarantee. But the notes in circulation at the time of the repeal are not affected by it. The holder may still claim the right, by the force of the contract, to discharge any debt he may owe to the State in the notes thus issued.

"It is argued that there could have been violated or impaired no contract with the plaintiff in error, as it does not appear he had the notes tendered by him in his possession at the time the twenty-eighth section was repealed. It is admitted that he had the notes in his possession at the time he made the tender, *and that they were issued by the bank before the repeal of the section; and nothing more than this could be required.*

* * * * * * * * * * * * *

"The guarantee included all the notes of the bank in circulation as clearly as if on the face of every note the words had been engraved, 'This note shall be received by the State in payment of debts.' And that the legislature could not withdraw this obligation from the notes in circulation at the time the guarantee was repealed, is a position which can require no

argument. Any one had a right to receive them, and to test the constitutionality of the repeal. * * * * * * * * *

"A State can no more impair, by legislation, the obligation of its own contracts, than it can impair the obligation of the contracts of individuals. We naturally look to the action of a sovereign State to be characterized by a more scrupulous regard to justice, and a higher morality, than belong to the ordinary transactions of individuals performing it, which is recognized and enforced by the laws. And if the law is so changed that the means of legally enforcing this duty are materially impaired, the obligation of the contract no longer remains the same."

* * * "And if, as a consequence [of the decision], some increase of taxation should be required by the State, it will be nothing more than is common to all other States that perform their contracts. It would be a most unwise policy for a State to improve its currency through a violation of its contracts. In such a course, the loss of the State would be incomparably greater than its gain. Any argument in commendation of such an action by a State can not be otherwise considered than as exceedingly infelicitous and unjust."

Curran *vs.* State of Arkansas, 15 Howard, 305, is a pertinent illustration of the principle contended for. There the legislature of Arkansas incorporated a bank of which the State was the sole stockholder. Various acts were afterwards passed, the bank having meantime become insolvent, which, under the guise of giving creditors greater remedies, tended to impair the rights of creditors who were holders of the bank's paper. The Supreme Court of the State having held these acts valid, this court reversed the judgment. It was argued that, as the State had created the corporation, so it might destroy it, and its contracts, and, as by repealing the charter the contracts would be destroyed, the State might modify, obstruct, and abridge the rights of creditors and the obligations of their contracts without repealing the charter (310). Both premises and conclusion were denied by this court.

"But it by no means follows," said Mr. Justice Curtis, "because a law affects only the remedy, that it does not impair the obligation of the contract. The obligation of the contract, in the sense in which those words

are used in the Constitution, is that duty of performing it, which is recognized and enforced by the laws. And if the law is so changed that the means of legally enforcing this duty are materially impaired, the obligation of the contract no longer remains the same."

Mc Gee *vs.* Mathis, 4 Wallace, 143, is to the same effect. There the State had issued scrip receivable in payment for certain lands, and had declared that the lands should not be taxed for ten years. It was held that this act could not be repealed as against purchasers of scrip issued before the repeal, though bought by those purchasers after the repealing act.

These decisions govern this case. The funding act of 1874 was to those accepting its provisions as much a part of the obligation of the bond of 1871, as is a supplement to the charter of a corporation a contract by the State, irrepealable thereafter. A stockholder at the date of the supplement is as much protected thereby as if he sold and bought in his stock the next day. The contract, as soon as made, becomes a part of the obligation from the date of the enactment, and remains a provision of that particular obligation as long as the obligation exists. It is like a covenant running with land, which enures to the benefit of him who holds title. Once attached to the bond it can not be severed from it, and can be relied upon by either present holder or subsequent purchaser.

Therefore the act of 1874 could no more be repealed as against the holders of bonds within its terms and issued before it was passed, than could the act of 1871 by which the bonds were created.

But if this were otherwise, as to several of the plaintiffs the remedy sought should have been granted, because their titles accrued, respectively, subsequently to the act of 1874 and prior to that of 1876.

Von Hoffman & Co.[1] purchased thirteen of their bonds in December, 1874, and twelve more on March 24th, 1876,

Morton, Bliss & Co.,[1] purchased part of their thirty-one bonds in September, 1871. Theresa A. Anderson,[2] bought her bonds in April, 1875. John Bloodgood[3] bought ninety-four bonds in August, 1874. The bonds of Oliver Ames[4] were purchased in 1872, and at subsequent periods. The (funding) act No. 3 was passed January 24th, 1874, and the modifying act of 1876 on the 17th of April, of that year. All of the last-named securities (except those of Oliver Ames, the dates of whose subsequent purchases are not given) were bought after the act of 1874 was passed, and upon the faith of that act, and prior to the act of 17th April, 1876. In respect, therefore, to all of these bonds the relief prayed should have been granted.

And we ask for a decree compelling the Board of Liquidation to fulfill the contract made by the act of 1874. This is like a bill for specific performance by an agent of the principal defendant. If the process of the court can not reach the latter, it will be issued to compel the agent to perform what his principal has agreed to do. This is not an action against the State.

See Hartman *vs.* Greenhow, decided at this term by this court.

To recapitulate: We have shown that the bonds of April, 1871, are valid in the plaintiffs' hands for three independent reasons. If we are right on either of these grounds, the court below was bound by the (funding) act of 1874 to declare our bonds valid obligations, and to grant adequate relief against the defendants. The rights given by the act of 1874 were not affected by those of 1875 and 1876, for the act of 1875 provided either—

---

[1] 11.
15.
[3] 15, 16.
10.

(*a.*) For a proper ascertainment, by a tribunal having jurisdiction, of the validity of the bonds, and no more; or

(*b.*) It attempted to deprive the Federal Courts of jurisdiction, and was, therefore, void. And the act of 1876 was of no binding force,

(*a.*) In so far as it attempted to impair the contract created by the act of April 1871, under which the bonds were issued; or

(*b.*) In any other respect, for as soon as the contract of 1874 (funding act) was made, the bonds then issued were given a new privilege, which could not be impaired even in the hands of those who then held them;

(*c.*) And certainly not in the hands of those who purchased them prior to the Act of 1876, but subsequently to the act by which the privilege was granted.

Finally, we ask the court not only to reverse the judgment of the court below, and to direct a decree to be entered declaring our bonds valid and subsisting obligations of the State of Louisiana, entitled to all the privileges of the funding act; but also to direct a decree commanding the members of the Board of Liquidation to specifically perform the contract into which the State of Louisiana, their principal, had entered with these plaintiffs.

W. W. HOWE,

JAMES LOWNDES,

A. SYDNEY BIDDLE,
GEORGE W. BIDDLE,

SIMON STERNE.

MARCH 22d, 1881.

APPENDIX.

A.

No. 3, of 1874 (24th January, 1874), of the Laws of the State of Louisiana, entitled

"An Act to provide for funding obligations of the State by exchange for bonds; to provide for principal and interest of said bonds; to establish a board of liquidation; to authorize certain judicial proceedings against it; to define and punish violations of this act; to prohibit certain officers diverting funds except as provided by law, and to punish violations therefor; to levy a continuing tax and provide a continuing appropriation for said bonds; to make a contract between the State and holders of said bonds; to prohibit injunctions in certain cases; to limit the indebtedness of the State, and to limit State taxes; to annul certain grants of State aid; to prohibit the modification, novation or extension of any contract heretofore made for State aid; to provide for the receipt of certain warrants for certain taxes, and to repeal all conflicting laws."

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Louisiana in General Assembly convened*, That for the purpose of consolidating and reducing the floating and bonded debt of the State, the Governor, Lieutenant-Governor, Auditor, Treasurer, Secretary of State, and Speaker of the House of Representatives are hereby authorized to cause to be prepared and to issue bonds, to be known as "consolidated bonds of the State of Louisiana," of the denominations of one hundred, five hundred, and one thousand dollars to the amount of fifteen millions of dollars, or so much thereof as may be necessary, all payable forty years from the first day of January, 1874, and all to be numbered consecutively, and made payable to bearer, and to bear interest at the rate of seven per cent. per

annum, payable semi-annually in the city of New York and city of New Orleans, on the first day of July and January of each year, and coupons for such interest shall be annexed thereto; said interest and principal to be payable in lawful money of the United States.

SEC. 2. *Be it further enacted, &c.*, That the parties designated in the foregoing section shall constitute a Board of Liquidation, and a majority of said Board shall elect a fiscal agent for the State, who shall be a member of said Board.

SEC. 3. *Be it further enacted, &c.*, That the bonds authorized by the section one shall be signed by the Governor, Auditor, and Secretary of State, and the coupons shall be signed by the Auditor and Treasurer; and, when so prepared, said bonds shall be exchanged by the Board of Liquidation for all valid outstanding bonds of the State and all valid warrants drawn previous to the passage of this act by the respective auditors of public accounts of the State on the treasurer thereof, except warrants issued by the auditor in payment of the constitutional officers of the State, at the rate of sixty cents in consolidated bonds for one dollar in outstanding bonds and all valid warrants; *provided*, that the holder of any bond or valid warrant rejected by a majority of said board may apply by petition to the proper court for relief, and if final judgment shall be rendered in his favor against said board, it shall be the duty of said board to fund his said claim in bonds at the rate provided by this act; *and provided, further*, that if any member of said Board of Liquidation shall knowingly audit and fund any illegal claim against the State he shall be deemed guilty of a misdemeanor, and shall, on conviction, be fined not less than five thousand dollars, and be imprisoned not less than two years, at the discretion of the court. And

any person knowingly procuring the same to be done shall be subject to the same penalty.

SEC. 4. *Be it further enacted, &c.*, That the exchange of the bonds or valid warrants authorized by this act shall be effected by said board of liquidation in the cities of New Orleans and New York.

SEC. 5. *Be it further enacted, &c.*, That the consolidated bonds herein authorized shall be held and used by said Board of Liquidation only for the purpose of exchange as aforesaid; said bonds shall be used for no other purpose or purposes than as authorized by this act, and any member of the Board of Liquidation using or attempting to use, or attempting to induce any person or persons to use said bonds or any of them for any other purpose or purposes shall, on conviction thereof, be punished by a fine of not less than five thousand dollars, and by imprisonment at hard labor for not less than one year.

SEC. 6. *Be it further enacted &c.*, That notice of the adoption of this act shall be published by said board in one or more journals of New Orleans, New York, London, Paris, and Amsterdam.

SEC. 7. *Be it further enacted, &c.*, That a tax of five and a half mills on the dollar of the assessed value of all real and personal property in the State is hereby annually levied, and shall be collected, for the purpose of paying the interest and principal of the consolidated bonds herein authorized, and the revenue derived therefrom is hereby set apart and appropriated to that purpose, and no other. And that it shall be deemed a felony for the fiscal agent or any officer of the State or Board of Liquidators to divert the said fund from its legitimate channel as provided, and

upon conviction the said party shall be liable to imprisonment for not more than ten years nor less than two, at the discretion of the court. If there shall, during any year, be a surplus arising from said tax after paying all interest falling due in that year, such surplus shall be used for the purchase and retirement of bonds authorized by this act, said purchases to be made by the said Board of Liquidation, from the lowest offers, after due notice; *provided*, that the total tax for interest and all other State purposes, except the support of public schools, shall never hereafter exceed twelve and a half mills on the dollar. The interest tax aforesaid shall be a continuing annual tax until the said consolidated bonds shall be paid or redeemed, principal and interest; and the said appropriation shall be a continuing annual appropriation during the same period, and this levy and appropriation shall authorize and make it the duty of the Auditor and Treasurer, and the said Board, respectively, to collect said tax annually, and pay said interest and redeem the said bonds until the same shall be fully discharged.

SEC. 8. *Be it further enacted, &c.*, That the bonds and valid warrants outstanding at the time of the passage of this act shall, as fast as they are received in exchange for consolidated bonds, be canceled and destroyed by the said Board of Liquidation, and consolidated bonds purchased as provided for in section 7 of this act shall be canceled and destroyed after public notice has been given of the same in the official journal of the State, in the presence of as many citizens as may desire to be present, in like manner, and within ten days after such destruction, in each case, a process verbal of the same shall be published and a report made to the General Assembly on the first Monday of every year, by said board.

SEC. 9. *Be it further enacted, &c.*, That it shall be the duty of the Auditor in his next annual report to give a detailed account of the proceedings had under this act, including the amount of new bonds issued, the amount of old bonds and valid warrants canceled, the amount of the same outstanding, and the cost of the exchange, and annually thereafter a full and exact statement of the condition of the public debt under the operations of this act.

SEC. 10. *Be it further enacted, &c.*, That any judge, tax collector, or any officer of the State, obstructing the execution of this act, or any part of it, or failing to perform his official duty thereunder, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by imprisonment not exceeding five years, and by fine not exceeding two thousand dollars, at the discretion of the court; *provided*, that this section shall in no wise prejudice or affect the criminal proceeding under section five of this act.

SEC. 11. *Be it further enacted, &c.*, That each provision of this act shall be, and is hereby declared to be, a contract between the State of Louisiana and each and every holder of the bonds issued under this act.

SEC. 12. *Be it further enacted, &c.*, That all grants of State aid heretofore made, whether of bonds, indorsements, subscriptions of stock, or otherwise, which have have become lapsed or forfeited, be and the same are hereby repealed and annulled, nor shall the State hereafter modify, novate, or extend any contract heretofore made for the giving of State aid in any form or under any pretext.

SEC. 13. *Be it further enacted, &c.*, That the entire State debt, prior to the year of our Lord nineteen hundred and fourteen, shall never be increased, directly or indirectly, beyond the sum of fifteen millions of dollars, hereby authorized, it being the intent and object of this act, and of the exchanges to be effected thereunder, to reduce and restrict the whole indebtedness of the state to a sum not exceeding fifteen millions of dollars, and to agree with the holders of the consolidated bonds to be issued hereunder that said indebtedness shall not be increased beyond said sum during said period.

SEC. 14. *Be it further enacted, &c.*, That any tax collector who shall turn over any money or warrants by him collected to any person except to the State Treasurer shall be deemed guilty of a misdemeanor, and shall, on conviction, be subject to the penalties prescribed in section 10 of this act, and shall, in addition thereto, be liable in damages in double the amount so turned over; and any State officer requiring or demanding that said taxes shall be turned over to him, except the Treasurer of the State, shall be liable on conviction to the same penalties as are prescribed in this section.

SEC. 15. *Be it further enacted, &c.*, That from and after the passage of this act until the first day of July, 1874, all valid Auditor's warrants issued for debts due prior to January 1st, 1874, shall be received for all back taxes, licenses, and interest and penalties thereon, due prior to said 1st of January, 1874, except two mills for school fund, three mills for levee construction and repair fund, and two mills to the interest fund, for the purpose of paying any interest in arrears accruing on the bonded debt of the State prior to the passage of this act.

SEC. 16. *Be it further enacted, &c.*, That no court or judge thereof, shall have power to enjoin the payment of principal or interest of any bond issued under this act, or the collection of the special tax therefor, or to enjoin any officer of State or parish in receiving warrants as is prescribed in section fifteen of this act.

SEC. 17. *Be it further enacted, &c.*, That all acts or parts of acts in conflict with this act, or any section thereof, are hereby declared to be repealed, and that this act shall take effect from and after its passage.

(Signed) CHARLES W. LOWELL,
Speaker of the House of Representatives.

(Signed) C. C. ANTOINE,
Lieutenant-Governor and President of the Senate.

Approved January 24th, 1874.

(Signed) WILLIAM P. KELLOGG,
Governor of the State of Louisiana.

A true copy:

P. G. DESLONDE,
Secretary of State.

B.

No. 11 (EXTRA SESSION), OF 1875 (17TH MAY, 1875), OF THE LAWS OF LOUISIANA, ENTITLED

"An Act, Supplemental to act No. 3, approved January 24, 1874, and to provide for testing at the instance of any taxpayer, in the courts of the State, the legality and validity of any items of State indebtedness, the legality and validity of which may have been or may hereafter be questioned; to prohibit the Board of Liquidation under said act, No. 3 of 1874, from funding the questionable and doubtful obligations of the State, named or designated in this act, until the same shall have been finally declared legal and valid by the Supreme Court of the State of Louisiana, and to provide the necessary means for carrying the provisions of this act into effect; to provide additional members of the said Board of Liquidation, and to repeal conflicting laws."

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Louisiana in General Assembly convened*, That the Board of Liquidation constituted by the second section of act No. 3, approved January 24, 1874, entitled an act to provide for funding obligations of the State, by exchange for bonds, etc., is hereby prohibited from issuing any bonds in exchange for any outstanding bonds of the State or warrants drawn previous to the passage of said act by the respective Auditors of Public Accounts of the State on the treasury thereof forming items of State indebtedness, the legality or validity of which may have been, or may hereafter be, questioned, until said bonds or warrants shall first, by final decree of the Supreme Court of the State of Louisiana, have been declared legal and valid obligations against the State of Louisiana, and that the same were issued in strict conformity to law, and not in violation of the constitution of this State or of the United States, and for a valid consideration. That any person assessed for State taxes is hereby authorized, in his own name, to institute suit, or to intervene in any suit which may now or hereafter be instituted in a court of competent jurisdiction in the parish of Orleans against said Board of Liquidation, to test the legality and validity of any issue of bonds of the State, or warrants drawn previous to the passage of said act No 3, by the Auditor of Public Accounts on the State treasury, the legality and validity of which may have been, or may hereafter be, questioned, and to inquire into the consideration for which said bonds or warrants may have been issued, and in his own name to prosecute such suit or suits to a final termination; and until the legality and validity of each and every issue of bonds and warrants as aforesaid shall have been finally passed upon and determined by the Supreme Court of the State of Louisiana, and that, in order to facilitate and bring to a spedy determin-

ation all matters in controversy, as provided for in this act, every suit hereby instituted shall have precedence in all courts over all other cases, and to be fixed by motion of either party; the day of trial to be named in the motion, and all other cases fixed for the day named in the motion fixing such cases for trial to give way thereto; that all costs incurred in any suits under this act, to the extent of one suit carried to a final issue, as to each separate issue of bonds or warrants, the legality, validity or consideration of which are questioned, if the court shall so determine, shall be borne by the State of Louisiana, and which costs, on approval of the court, shall be warranted for by the Auditor of Public Accounts on the State Treasurer, to be paid out of any funds in the treasury not otherwise appropriated; *provided*, that any holder or holders of bonds or warrants whose legality, validity or consideration is questioned in any suit or suits brought under the provisions of this act may intervene in said suit or suits, and that the cost of such interventions shall abide the results of the suits in which such interventions shall be filed.

SEC. 2. *Be it further enacted, &c.*, That the following issue of bonds and warrants, so far as the same may be now outstanding, are declared questioned and doubtful as to their legality and validity, and said board of liquidation are hereby prohibited from issuing bonds authorized by section one of act No. 3 of 1874 in exchange therefor until the legality, validity, and consideration of the same shall have been tested under the provisions of this act, and a final decree rendered as to their legality, validity and consideration, to wit:

First—The following bonds, considered and held as belonging to the redemption of the State debt funds and the free school funds, being bonds of the State of the various issues which had been redeemed or never issued, and which have been reported by the Auditor of Public

Accounts as missing, or which were sold under Act No. 81, approved May 25th, 1872, and issued or re-issued, namely: [Here follows the enumeration of eleven classes of bonds].

The bonds of the New Orleans, Mobile, and Texas Railroad Company, issued under act No. 26, approved February 17, 1869,	$ 750,000
The bonds issued to the New Orleans, Mobile and Texas Railroad Company, under act No. 95, approved April 20th, 1871,.....	2,500,000
Bonds issued to the North Louisiana and Texas Railroad Company, under act No. 97, approved April 10th, 1870, and act No. 108 of 1868,.....	1,122,000

And it is further provided, that the Attorney General or Assistant Attorney General shall promptly and faithfully conduct to a final termination through all the courts all suits instituted, or which may hereafter be instituted, to test the legality, validity or consideration of the debts in this section set forth, and all the floating debt, the payment of which was enjoined in suit No. 369 of the Superior District Court, entitled the State of Louisiana *vs.* Charles Clinton, Auditor, and Antoine Dubuclet, Treasurer, nor shall he or they dismiss any of said proceedings, or compromise or waive any rights of the State, on any matter connected with the testing of said items of indebtedness.

SEC. 3. *Be it further enacted, &c.*, That the Board of Liquidation provided by act No. 3 of 1874, approved January 24, 1874, shall hereafter consist of the persons mentioned in the first and second sections of said act, and in addition thereto the president of the Cotton Exchange, in the city of New Orleans, shall be a member of said board, and the president of the Board of Trade in the City of New Orleans shall also be a member, in case such Board of Trade be established by statute and not

otherwise; provided, that any delay, refusal, or inability of either or both of said last named persons to qualify as members of said board, or the non-existence of either, shall not effect the validity of the said board or its acts, and a majority of said board shall be required in order to perform an official act.

SEC. 4. *Be it further enacted, &c.*, That all laws or parts of laws contrary to or inconsistent with the provisions of this act are hereby repealed, and that this act take effect from and after its passage.

(Signed) E. D. ESTILETTE,
Speaker of the House of Representatives.

(Signed) C. C. ANTOINE,
Lieutenant-Governor and President of the Senate.

Approved May 17th, 1875.
(Signed) WILLIAM P. KELLOGG,
Governor of the State of Louisiana.

A true copy:
P. G. DESLONDE,
Secretary of State.

C.

No. 86, OF 1876 (17TH APRIL, 1876), OF THE LAWS OF THE STATE OF LOUISIANA, ENTITLED

"An Act to prohibit the funding of and the issue of consolidated bonds in exchange for any portion of the unlawfully guaranteed bonds of the New Orleans, Mobile, and Chattanooga Railroad Company, and of the two and a half millions of bonds issued unconstitutionally for stock in said company."

WHEREAS, The act No. 26, approved February 17th, 1869, creating an obligation of the State to guarantee

the second mortgage bonds of the New Orleans, Mobile, and Chattanooga Railroad Company, provided that "none of said second mortgage bonds, for or upon that portion of the main line of said railroad not constructed within the time limited shall be guaranteed by the State of Louisiana," and that in case of failure to comply with the conditions precedent the obligations of the State to guarantee bonds should "cease and determine;" and

WHEREAS, said railroad company did not comply with the conditions prescribed in the law, and the State executives did, in disregard of the terms of the act and of the constitutional limitation of the State debt, endorse eight hundred and seventy-five thousand dollars of said second mortgage bonds, and issue two millions five hundred thousand dollars of State bonds to said company for stock in lieu of a guarantee of bonds, when the right and obligation to guarantee bonds had ceased and determined; and

WHEREAS, Efforts are now being made under the forms of law to perpetuate these illegal claims upon the State by procuring the funding of these illegally endorsed and unconstitutionally issued bonds:

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Louisiana in General Assembly convened,* That the Board of Liquidation constituted by the second section of act No. 3, approved January 24th, 1874, entitled an act to provide for funding obligations of the State, by exchange for bonds, &c., is hereby prohibited from issuing any consolidated bonds of the State in exchange for the second mortgage guaranteed bonds of the New Orleans, Mobile, and Chattanooga Railroad Company, or any of said bonds, it being hereby declared and proclaimed that said bonds were endorsed by the Governor of this State illegally and without authority under the act, and that therefore said unlawful indorsement could not and did not create a debt of the

State which is fundable. And, also, the said Board of Liquidation is hereby prohibited from funding and from issuing any consolidated bonds of this State in exchange for any portion of the two and a half millions of bonds issued for stock in said railroad company, under act No. 95, approved April 20th, 1871, it being hereby declared and proclaimed that the State received no consideration whatever for said issue of bonds; that the obligation of the State to endorse bonds in favor of the said company had ceased to exist before the passage of said act No. 95, of 1871; that said act could not and did not create a debt of the State which is fundable, and that the funding of said unlawfully issued bonds would violate the letter and spirit of said act No. 3, approved January 24th, 1874, impair the State's credit, and thereby lessen the value of State securities to the prejudice of the holders thereof.

SEC. 2. *Be it further enacted, &c.*, That all laws and parts of laws contrary to or inconsistent with the provisions of this act are hereby repealed, and that this act shall take effect from and after its passage.

(Signed) E. D. ESTILETTE,
Speaker of the House of Representatives.

(Signed) C. C. ANTOINE,
Lieutenant-Governor and President of the Senate.

Approved April 17th, 1876.
(Signed) WILLIAM P. KELLOGG,
Governor of the State of Louisiana.

A true copy.
P. G. DESLONDE,
Secretary of State.

SUPREME COURT U.S.
FILED
APR 8 1881
JAMES H. McKENNEY, Clerk

UNITED STATES SUPREME COURT.

No. 265.

HARRISON DURKEE ET ALS.,

Appellants,

vs.

THE BOARD OF LIQUIDATION OF THE STATE OF LOUISIANA,

Appellees.

Appeal from the Circuit Court of the United States for the District of Louisiana.

BRIEF ON BEHALF OF APPELLEES.

The present action was commenced by a bill in equity against the Board of Liquidation of Louisiana, wherein the orators complain, &c., that they are owners of negotiable bonds of the State of Louisiana, duly made and issued under and in compliance with the terms and conditions of act No. 95 of the Legislature of Louisiana of 1871; said bonds having coupons attached, two coupons having been paid when due.

The bill then proceeds to declare the respective interests of each complainant.

2. That by Act 3 of 1874, creating the Board of Liquidation, it was provided that these and all other valid bonds might be exchanged for consolidated bonds therein provided, and on the terms therein prescribed; and it was made the duty of the said board to make such exchanges; upon rejection of any bonds (so the bill means), then the holder to have an action against such board, to have such rejected bond declared valid and fundable.

3. That said board has refused and still refuses to exchange said bonds, though requested, alleging as an excuse the provisions of Act No. 11 of 1875, extra session, and Act No. 86 of 1876, which undertake to profess and forbid such funding; and the complainants then say that these acts are unconstitutional, being in conflict with the Constitution of the United States, Art. I, Sec. 10, forbidding a State to pass any law impairing the obligation of contracts, and with Articles 73 and 110 of the Constitution of Louisiana.

4. That said bonds, issued under Act 95 of 1871, were issued in exchange for an equal amount of stock in the New Orleans, Mobile & Texas Railroad Company, a company whose name had been changed from that of Mobile & Chatanooga Railroad Company.

5. That orators are holders of said bond for value, before maturity, in good faith, having all the rights of such holders, and these funds are valid and fundable, and your orators are entitled to a decree to that end.

The bill concludes: "And your orators pray that a decree of this honorable court may be rendered declaring the said bonds of your orators respectively to be valid and legal obligations, and that your orators may have such other and further order and relief in the premises as the case may require, and to equity may seem correct," etc.

To this bill the Board of Liquidation answered—

(*a*) Admitting the issue and ownership of bonds, as alleged.

(*b*) Admitting the creation of the Board of Liquidation by Act 43 of the Legislature of Louisiana of 1874; and the right of bondholders to an action to fund, in the event of refusal by the Board of Liquidation.

(*c.*) Denying the validity of the bonds so as to make them fundable.

(*d.*) Averring that the State received no consideration for the issue of said bonds; that the New Orleans, Chattanooga Railroad Company, the professed purpose of their issuance, had ceased to exist before the passage of said act No. 95 of 1871; that said act could not and did not create a debt of the State which is fundable; and that the funding of said unlawfully issued bonds would violate the letter and spirit of act No. 30 of 1874.

(*e.*) Admitting that the Board of Liquidation refused fundings to their bonds, alleging as reason therefor the acts of the Legislature, No. 11 of 1875, and No. 86 of 1876, averring their constitutionality.

(*f.*) Averring that by act No. 11 of 1875 it was prohibited from issuing any bonds in exchange for outstanding bonds of the State, unless under final judgment of the Supreme Court of the State; that no such decree has been pronounced without which the board is without power or authority to exchange said bonds.

(*g.*) While admitting the issue of the bonds described under act 95 of 1871, the State avers that it is unconstitutional, for the reason that it provides for an issue of two millions five hundred thousand dollars in contravention of the amendment of the constitution of the State, limiting the State debt; and that said act was declared unconstitutional in suit of *State* vs. *Clinton and Dubuclet*, No. 5,768 of the docket of Supreme Court.

(*h.*) Denying that plaintiffs are holders in good faith, before maturity.

(*i.*) Averring that the Board of Liquidation is the creature of the State for the exercise of specific and definite powers belonging to the sovereignty of the State; that these powers and functions are appointed in the act No. 3 of 1874, creating the board and the act amendatory thereof; that by act 11 of 1875 of the general assembly of the State, it is expressly prohibited from exchanging any bond or bonds until the validity of the issue shall have been finally passed upon by the Supreme Court of the State of Louisiana.

(*k.*) Averring that, by act 86 of 1876 of the Legislature, these very bonds sued on are declared null and void and defendant, the Board of Liquidation, is prohibited from funding them.

And defendant's prayer responds to these pleadings. Record, p. 5, 6, and 7.

June 10th, 1878, the complainants' bill was dismissed by judgment of the Circuit Court.

Thereafter the pending appeal was prosecuted. By stipulation of counsel, the transcript in *Williams & Guion* vs. *The State of Louisiana*, as now printed, shall be deemed to be and taken as an exhibit of the transcript in the present case. Record, p. 20.

Argument.

In this case is involved the validity of the same issue of bonds as is involved in the case of *Williams & Guion* vs. *Clinton, Auditor, and als.*, No. 7 of the docket of this court.

The questions presented are not all identical however. Reduced to their last expressions, the questions peculiar to this cause, are—

1st. Can a State be brought into court by a citizen otherwise than by its permission, and then in the manner pointed out by the act of permission?

2nd. Can the holder of a State obligation compel the State to make a totally different contract with him, or, in broader terms, can an individual cause a State to make a contract with him through the courts?

For success, in this court, the Appellant must establish the affirmative of both of these propositions.

I.

The Act of 1874, was simply a scheme devised to ascertain, arrange and provide for the legitimate debt of the State, and to that end to create a Board of Liquidation, with certain well-defined restricted powers and functions.

Sections 3, 4 and 12, of the Act make it apparent that the Legislature knew that there were invalid obligations outstanding, which should not be taken into the scheme; discretionery power of rejection was therefore given to the board; but that the interests of parties should not be at its mercy, it provided that "if final judgment shall be rendered in his (the holder of the obligation) favor against the board, in authorized proceedings, it shall be the duty of the board to fund his said claim in bonds at the rate provided by this act."

This act was a tender of arrangement which the State was certainly not compelled to make, and its acceptance purely optional with the alleged creditor. If accepted, then, by section 11 of the act, "each provision of this act shall be, and is hereby declared to be a contract between the State of Louisiana and each and every holder of the bonds issued under the act," thus creating rights that, if assailed by the State statute, would be protected by the Constitution of the United States. But if not accepted by the creditor, then, clearly, if he has any rights at all, they must be such as flow from his original contract.

Now, until accepted, and rights are vested by funding under

this act, it seems too clear for argument that the State has a perfect right as to any alleged issue or claim to withdraw its proffer to bond, and to direct its creature not to fund. Such withdrawal does not touch the right of creditors, whose only rights against the State are to enforce them upon their obligations as they exist merely.

In 1875, as a part of this funding scheme, and as amendatory thereof, and prior to any acceptance thereof by suit, as provided, or otherwise, the State withdrew, by Act No. 11, extra session, from its creature, the Board of Liquidation, the right to fund the series of bonds in controversy, "until the legality and validity of each and every issue of bonds and warrants, as afore-aid, *shall have been finally passed upon and determined by the Supreme Court of the State of Louisiana.*" Sec. 1.

And, by the same Act, the bonds issued to the New Orleans, Mobile & Texas Railroad Company, under Act 95 of 1871, $2,500,000 are put under bane, from which only a decision as provided above, could relieve them.

Taking the two Acts together, the position is, that the State offers this series of bonds, which it declares doubtful funding, upon the condition that its holders shall establish its validity by a final judgment of the Supreme Court of Louisiana.

If it had the right to make the proffer or not, in its discretion; if it had the right to withdraw it altogether, at any time, before acceptance; if the holder of the bond had no right to compel the State to make or continue the offer, except by accepting and closing a contract before withdrawal, then it follows necessarily, that the State had the right to put its own conditions on the proffer; it had the right to agree to be bound by one tribunal, and not by another, because the plaintiffs herein, conceding them to be creditors, had not the right to go into any tribunal for this

funding purpose, but by leave of the State. This proffer has neither been accepted nor acted upon.

We will not be called on to adduce authority here to establish that a State is so far sovereign that it cannot be sued except with its own assent.

Act No. 84, of 1876, is simply a cancellation of the power and right of the Board of Liquidation to fund the issue of bonds in question.

All this occurred long prior to a demand for exchange of these bonds by the holders, for their action was instituted November 24, 1877.

If the question were upon the validity and enforcement of the terms of the contract, expressed in the bonds of that issue, we could understand how the constitutionality of the Act could arise; as it is, we confess our inability to perceive it, except upon a total misapprehension of the purposes and objects of the present suit.

II.

Stripped of all verbiage, the demand of plaintiffs is that the State of Louisiana be compelled to destroy the contract, if any she has, evidenced by the bonds of April 24, 1871, and substitute therefor a new and entirely different contract, to wit: the consolidated bond to be issued by the Board of Liquidation.

We have seen that the State has withdrawn distinctly and unequivocally, the power and right in its creature, the Board of Liquidation, to make any exchange whatever for the issue of bonds in controversy.

How, then, as to them, they can compel the State to stand in judgment, and how, further, they can expect the court to make a contract for the State, which it declares its unwillingness to make; where the power in the court so to do, is to be found, are questions to which we discover no answer favorable to appellant's pretensions.

We pass by, with a simple allusion to its strangeness, the attitude of these plaintiffs, who stand before the court proclaiming the unconstitutionality of acts, except as to the creation of the Board of Liquidation, which, if true would necessarily involve a dismissal of their action, for want of authority to bring the defendant into court.

The Board, *quo ad* this suit, is the State, and not sued as an officer whose duty is fixed, and may therefore be compelled to perform it, by extraordinary remedy. If the court shall find occasion to pass beyond these questions, then upon the issue of the validity *vel non* of the bonds, we respectfully refer to what we have said in our brief in the case *Williams and Guion*, vs. *The State of Louisiana*, Clinton, Auditor, *& al.* Adding, that in *Railroad Co.* vs. *McClure*, 10 Wallace, 515, this court has said that "the question of the validity of bonds is not one of Federal jurisdiction."

We submit that the judgment appealed from shows no error, and should be affirmed; which we humbly pray your Honors' to decree.

GUS. A. BREAUX.
JAMES LINGAN,
JNO. McENERY
For the State of Louisiana.

APRIL, 1881.

Supreme Court of the United States.

OCTOBER TERM, 1880.—No. 265.

DURKEE *vs.* THE BOARD OF LIQUIDATION.

CONSTITUTION OF LOUISIANA, RATIFIED 1874.

ART. —, SEC. 1. The issue of consolidated bonds authorized by the General Assembly of the State at its regular session of the year 1874, is hereby declared to create a valid contract between the State and each and every holder of said bonds, which the State shall by no means and in no wise impair. The said bonds shall be a valid obligation of the State in favor of any holder thereof, and no court shall enjoin the payment of the principal or interest thereof, or the levy and collection of the tax therefor. To secure such levy, collection, and payment, the judicial power shall be exercised when necessary. The tax required for the payment of the principal and interest of said bonds shall be assessed and collected each and every year until the bonds shall be paid, principal and interest, and the proceeds shall be paid by the treasurer of the State to the holders of said bonds, as the principal and interest of the same shall fall due, and no further legislation or appropriation shall be requisite for the said assessment and collection and for such payment from the treasury.

CONSTITUTIONAL AMENDMENT OF DECEMBER 15, 1870.

ART. —. That prior to the 1st day of January, 1890, the debt of the State shall not be so increased as to exceed twenty-five millions of dollars.